THE DEATH OF JOHN WAYNE WILSON

A report by the New York City
Board of Correction
Robert B. McKay, Chairman

July 21, 1973

RECOMMENDATIONS

1. The Courts

A procedure must be established so that judges who have referred defendants to hospitals for psychiatric examinations are informed periodically about the progress of the examinations. No defendant should be left to languish in a prison psychiatric ward without prompt and adequate professional attention. The courts are formally responsible for ordering the transfer of inmates to outside hospitals for psychiatric attention; they should also be responsible for the prompt enforcement of such orders. In light of the confusion and lack of concern illustrated by the Wilson case, judicial initiative appears sorely needed.

Where an 18-b attorney is listed on both the Criminal and Supreme Court panels, the defendant indicates a desire to have the attorney continue to represent him after indictment, and the attorney is also willing to continue, there seems to be no reason for the court to assign a new attorney to the case. Indeed, assignment of new counsel contributes to fragmentation of representation (a major item of contention of the recently-concluded strike by attorneys of the Legal Aid Society), delay, and duplication of effort. While the courts have complete discretion in assigning 18-b counsel in homicide cases, the discretion should be exercised sensibly and with concern for the expressed needs of the defendant. In cases involving mentally disturbed indigent defendants, the courts should recognize the difficult problems facing any attorney assigned and welcome the

request of an attorney to serve as counsel. Where an 18-b attorney has contributed significant efforts to assist a mentally disturbed defendant in the Criminal Court phase of the case, the courts should recognize his concern and utilize it to assure the defendant of full and adequate representation.

The courts should not tolerate delays in affording psychiatric or other relevant examinations to defendants whose attorneys indicate the possibility of a defense of incapacity based on the defendant's mental disease or defect at the time of the crime. The necessity of an examination as close as possible in time to the date of the alleged crime to increase the reliability of the findings appears obvious.

The State Supreme Court should take steps to facilitate the disclosure of information concerning criminal cases to public agencies responsible for investigating and inquiring into aspects of the Criminal Justice System. In the course of its investigation into Mr. Wilson's case, the Board of Correction was twice informed by personnel in the General Clerk's Office that Mr. Wilson's case files were "missing." On the first occasion, the Clerk's Office was unable to indicate the location of Mr. Wilson's case file or the individual or agency last examining the file. On the second occasion, a call was made to the Clerk's Office to make certain that Mr. Wilson's case file was there. The Board was assured that it was. A staff member then personally visited the Criminal Court building to examine the file and was told after an initial search that the file was not there. A subsequent search revealed that the file was present.

The General Clerk's Office should establish a procedure whereby case files are rationally and efficiently controlled. When a file is removed, its location and the name of the individual or agency removing it should be indicated. No file should be removed for more than 24 hours without special authorization and a duplicate copy of the file's contents should be made in cases where the file will be removed for an extended period of time, such as during grand jury investigations.

The four dollar per page fee for the copying of file contents should be reduced. Photocopying machines that function (unlike the one presently available in the Clerk's Office) should be available for public use at minimal cost.

While there are undoubtedbly severe burdens that encumber personnel of the Clerk's Office because of staff shortages, the need for information by the public and public agencies requires a more cooperative attitude on the part of Office personnel.

2. Defense Counsel

On March 25, 1973, the Board of Correction issued a report entitled "Legal Representation of Indigent Criminal Defendants in New York City." Much of this report focused on the role of 18-b attorneys in providing full and adequate legal representation for indigent defendants. The Board declared that "the Criminal Justice System impedes attorneys in their efforts to provide counsel and the attention to individual needs which their clients so desperately require." The case of John Wayne Wilson illustrates the devastating extent of this impediment where a

defendant is not only indigent but also mentally disturbed.

The problems of court assignment of 18-b attorneys are noted in section (1) of these recommendations, supra.

As we stated in the March 1973 report, "the Administrative Judges of the Supreme Court in the First Department [should] adopt a rule ... ordering that each defendant whose case appears on the calendar be seen by a justice on the date of the scheduled appearance and that the reason for any adjournment be explained to the defendant."

Mr. Wilson was scheduled to appear in Supreme Court on eight different dates, including April 23, 1973, his last court date, when he was transported from and returned to Bellevue. Court records fail to indicate what occurred on each court date, whether Mr. Wilson in fact was produced in the courtroom, and whether reasons were stated for each adjournment over the four month period of his incarceration. The helplessness which the practice of unexplained adjournments produces in a criminal defendant can only be intensified when the defendant is mentally disturbed.

State courts should adopt a rule requiring defense counsel to make all preliminary motions in felony cases within 30 days after indictment, unless unusual circumstances arise which require that the time be extended. Applications for psychiatric and other examinations regarding a possible defense of insanity, if not made prior to indictment, should be covered by this rule. Such a rule would insure that uninterested or overburdened attorneys do not allow their cases to stagnate.

Defense attorneys who apply for court orders to procure outside services to examine the defendant should act with all speed to obtain the expert and complete the examination. Defense attorneys should recognize their obligation to inform fully private doctors (especially psychiatrists) whom they procure, as to their responsibilities and time frame. Defense attorneys should be in frequent contact with their clients to insure that clients know what examinations are to be conducted and that such examinations have in fact been conducted. If more than one 18-b attorney is assigned to a case, the attorneys should be in frequent contact to insure that each knows what co-counsel is doing.

When defense attorneys apply for court orders to transfer their clients from a City prison to an outside facility for medical or psychiatric examinations, the attorneys should fully inform the outside facility of what is to be done and should communicate periodically with the facility to ascertain the progress of the examination or the nature of any delay.

No 18-b attorney assigned to any indigent defendant, especially one who may be mentally disturbed, should allow a month to pass without seeing or communicating with his client. The mentally disturbed defendant's need for information on the status of his case and for periodic opportunities to communicate with counsel requires that 18-b attorneys keep in touch with their clients.

3. <u>The District Attorney's Office</u>

The District Attorney's Office should not present obstacles to defense counsel's efforts to obtain private psychiatric examinations

as soon after arraignment as possible, regarding mental capacity at the time of the offense. The practice of intervening in ex parte applications for psychiatric examinations under Section 722-c of the New York County Law should be eliminated.

The District Attorney should assign high priority to the trial of cases involving mentally disturbed defendants, as long as such defendants remain subject to the criminal process. Every effort should be made by the prosecution to avoid delay. If defense counsel applies for a psychiatric examination for a possible defense of insanity, the District Attorney should apply immediately for a psychiatrist of his choosing to examine the defendant.

Prison suicides should be treated as matters of high priority, and presented to the grand jury as soon as possible. Even if the grand jury finds no criminal conduct, it can make useful recommendations. Early action will help to demonstrate the system's commitment, and can lead to needed change.

4. The Department of Correction

A number of procedural changes are essential if the Manhattan House of Detention and other City prisons are to take steps necessary to prevent inmate suicides in cases like Mr. Wilson's. The Board of Correction has continually emphasized the fundamental necessity of removing all seriously disturbed inmates from the City's prisons, in favor of a therapeutically oriented environment, to ensure proper mental health care. Until a central psychiatric facility is constructed and in operation, the risk of mentally dis-

turbed inmates responding to the prison atmosphere by destroying themselves will be present. We have recognized the burdens placed upon correction personnel in dealing with mentally disturbed inmates who simply should not be confined to prison cells. However, until a long-range remedy is assured, institutional procedures must be developed to reduce the likelihood of suicide. A number of needed procedures are illustrated by Mr. Wilson's death.

Correction personnel must produce detained inmates for their attorneys and for visiting psychiatrists with minimal delay. No psychiatrist should be required to visit the institution several times before an inmate is made available without a lengthy delay. Psychiatrists who are ordered by the courts to examine inmates at the institution should be permitted to make advance appointments for a specific date and time. The inmate should be ready and waiting for the psychiatrist when he arrives.

Inmates who return to the institution from prison psychiatric wards in outside hospitals should be recorded in a special log book in the receiving room, indicating the time of arrival and the times and locations at which each part of the admitting process is conducted. Mentally disturbed inmates returning to the institution should be referred to institutional mental health personnel immediately. No decision about the housing location of mentally disturbed returnees should be made unilaterally by correction personnel. If mental health staff believe strongly that the inmate should be returned to the mental health unit, this should be done. If, because of overcrowding, the mental health staff feels that the inmate's condition is not serious enough to displace another inmate from

the unit, immediate psychiatric attention should be assured for the inmate wherever he is housed. Every effort to have suicidal inmates in the mental health unit must be made.

Mental observation sections in each institution should be operated in a strict and conscientious manner. "Special observation" officers should be assigned to work constantly with mentally disturbed inmates. They should be selected for this post on the basis of temperament, interest, and training in suicide detection and resuscitation. As long as the fourth floor of the Manhattan House of Detention is to be used to house the mentally disturbed overflow from the tenth floor, inmate suicide prevention aides must be assigned there.

Obviously, under absolutely no circumstances should correction officers engage in taunts or provocations with mentally disturbed inmates. The Department of Correction should review intensively all reported incidents of such conduct and remove any officer involved from a position in which he might deal with mentally disturbed inmates.

Psychiatric personnel who are on duty at an institution during evenings or on weekends should be informed of the names and locations of those inmates in need of attention. Inmates who return from an outside facility on a Friday and cannot be seen by the regular mental health staff should be seen by the weekend psychiatrist immediately on a Saturday.

5. Outside Hospitals

Communication and cooperation between correctional institutions and outside hospitals are less than satifactory. Discussions are pre-

sently under way between Bellevue and the Department of Correction to formulate a plan of total health care for the inmates in the Manhattan House of Detention, with one goal the centralization of control and responsibility for health services.

Outside hospitals that receive mentally disturbed inmates for psychiatric examinations should take the initiative in clarifying the nature of the examinations to be conducted and in alerting the court and defense counsel of the progress or delay in completing such examinations.

Under no circumstances should outside hospital prison psychiatric wards return to detention houses inmates sent by court order, without the court's awareness of the results of the hospitalization. Nor should any outside hospital allow an inmate to remain in its prison psychiatric ward without any psychiatric attention. At the very least, inmates such as Mr. Wilson should be given a diagnostic examination, to alert hospital administrators to potential problems while inmates are present and to permit them to develop current information for institutions in which inmates may subsequently be confined.